

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

NO. 4:15-CV-106-FL

THOMAS E. PEREZ,)	
SECRETARY OF LABOR,)	
MINE SAFETY AND HEALTH)	
ADMINISTRATION (MSHA),)	
on behalf of FRED MCKINSEY,)	ORDER FOR
Plaintiff,)	DEFAULT JUDGMENT
)	
v.)	
)	
PRETTY GOOD SAND COMPANY,)	
INC.,)	
Defendant.)	
)	

Having carefully considered the Government's motion for default judgment, the Court finds that the above-named defendant having failed to appear, plead or otherwise defend as provided by Rule 55 of the Federal Rules of Civil Procedure, entry of default has been entered against the named defendant, Pretty Good Sand Company.

WHEREAS, the Court finds as follows:

That the above-named defendant has failed to appear, plead or otherwise defend as provided in the Federal Rules of Civil Procedure. Therefore, the Clerk, upon motion of the plaintiff, entered Default on October 28, 2015. The plaintiff now moves for entry of default judgment against the defendant in the amount set forth in the Complaint filed in this action.

That Pretty Good Sand Company has failed to comply with the Decision dated November 14, 2014, and Order Granting

Secretary's Motion to Enforce dated on February 24, 2015, both issued by Administrative Law Judge John Kent Lewis ("ALJ Lewis") in Docket No. SE 2014-344 DM.

That Pretty Good Sand Company's violation of the Decision constitutes a "violat[ion] or fail[ure] or refus[al] to comply with any order or decision issued under [the Mine Act]." 30 U.S.C. § 818(a)(1)(A).

That accordingly, the Secretary is authorized to institute a civil action for relief, including injunctive relief, "or any other appropriate order in the district court." 30 U.S.C. § 814.

That the claim of Mr. Fred McKinsey is for the combined principal amount of \$12,647.25 in back pay, plus interest accrued from November 14, 2014, of \$1,677.41 as of December 2, 2015, with interest accruing daily after that date in the amount of \$4.58 per day to the day of judgment, and thereafter, at the judgment rate until paid, as ordered in the Decision of November 14, 2014.

That the defendant is in default for failure to pay Mr. McKinsey according to the terms set out in the Decision issued by ALJ Lewis on November 14, 2014, and the Order to Grant the Motion to Enforce of February 24, 2014.

THEREFORE, in accordance with Rule 55(a) and (b) of the Federal Rules of Civil Procedure, it is hereby ordered,

Defendant Pretty Good Sand Company is ordered to immediately comply with the Decision that was issued on November

14, 2014 by Administrative Law Judge John Kent Lewis and Defendant shall expunge Mr. McKinsey's record of any negative reference to the discrimination proceedings.

Defendant Pretty Good Sand Company is hereby ordered to:

(1) pay Mr. McKinsey \$12,647.25 in back pay plus interest accrued from November 14, 2014, of \$1,677.41 as of December 2, 2015, with interest accruing daily after that date in the amount of \$4.58 per day to the day of judgment, and thereafter, at the judgment rate; (2) expunge Mr. McKinsey's employment record of any negative reference to the discrimination proceedings and provide a neutral reference; and (3) pay a civil penalty in the amount of \$5,000, for its violation of Section 105(c) of the Act

The Clerk shall enter a Judgment in favor of Mr. Fred McKinsey for the sum of \$12,647.25 in back pay, plus interest accrued from November 14, 2014, of \$1,677.41 as of December 2, 2015, with interest accruing daily after that date in the amount of \$4.58 per day to the day of judgment, and thereafter at the judgment rate.

Further, the Clerk shall enter a Judgment in favor of the Mine Safety and Health Administration (MSHA) for a civil penalty in the amount of \$5,000 for defendant's violation of Section 105(c) of the Mine Act.

This the 14th day of January, 2016.



LOUISE W. FLANAGAN
United States District Judge